

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

CITY OF MEMPHIS, TENNESSEE,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	Civil Action No. 2:09-cv-2205-SHM-egb
)	
ZAYO BANDWIDTH TENNESSEE,)	
LLC f/k/a MEMPHIS NETWORX,)	
LLC,)	
)	
Defendant/Counter-Plaintiff.)	

**ZAYO BANDWIDTH'S MOTION FOR JUDGMENT ON THE PLEADINGS
AS TO THE CITY'S COMPLAINT**

Defendant/Counter-Plaintiff Zayo Bandwidth Tennessee, LLC f/k/a Memphis Networx, LLC (“Zayo”), respectfully moves for judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c), on all Counts of the Complaint filed by the Plaintiff, City of Memphis, in this action.

Zayo is entitled to judgment on a matter of law on all Counts. Counts 1, 2 and 5 seek the enforcement of certain contract terms that plainly exceed the City’s powers and thus are invalid under state law. Hence, Zayo is entitled to judgment on the City’s attempts to enforce those terms in this action.

Judgment is likewise appropriate on Counts 3, 4 and 6 of the Complaint. Count 3 asserts a “statutory right to compensation” but identifies no “statute,” and indeed no such “statutory right” exists. Count 4 asserts a claim for unjust enrichment, but under Tennessee law, no unjust enrichment claim will lie where an express contract exists, and the existence of such a contract is

not disputed here. Finally, Count 6 claims “conversion,” but fails to allege any acts that constituted conversion of City property. None of those Counts state an actionable claim, and this Court should enter judgment for Zayo on each Count.

A supporting memorandum is attached.

WHEREFORE, Zayo respectfully requests that the Court grant this motion and enter judgment for Zayo on Counts 1-6 of the City’s Complaint.

Respectfully Submitted,

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June 12, 2009

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of June, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/Clarence A. Wilbon